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No. 09–1443

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES L. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS,

Petitioner,

vs.

JOHNATHAN ANDREW DOODY,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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STATEMENT OF THE CASE

Petitioner stands by the factual and procedural background set forth at pages four through fourteen of the petition for writ of certiorari. The evidence presented at trial, apart from Doody's largely self-exculpatory statements to law enforcement officers, establishes that Doody robbed and murdered eight Buddhist monks and a nun.

REASONS FOR GRANTING THE WRIT

Doody asserts that, in "this unusual and extreme case," the *en banc* majority followed the AEDPA and this Court's caselaw construing the AEDPA and correctly determined that the Arizona Court of Appeals' factual and legal findings that Doody's statements to law enforcement officers were *Miranda*-compliant and voluntary were "unreasonable." Not so.

I. *The Arizona Court of Appeals' Determination that Doody was Adequately Advised of and Waived his Miranda rights was not Objectively Unreasonable.*

In his opposition, Doody asserts, "Arizona did not even defend these [*Miranda*] warnings on the merits in State court. And, in the en banc argument before the Ninth Circuit, Arizona's attorney acknowledged that what Doody was told was not clear." (Brief in Opposition at 7.) This mischaracterizes the record both in state and federal court.

In state court, the State of Arizona asserted that Doody was not "in custody" when he voluntarily accompanied detectives to the Task Force headquarters

and was questioned and, therefore, *Miranda* was simply inapplicable. *See, e.g., Stansbury v. California*, 511 U.S. 318, 322 (1994) (*Miranda* warnings required only if person being questioned is "i*n custody*"); *Oregon v. Mathiason*, 429 U.S. 492, 494–95 (1977) (same). Indeed, the trial court found that Doody was not "in custody" for purposes of *Miranda*:

> As to [Doody], this Court finds that *he was not under arrest or in custody when he was transported to the task force offices for questioning* on October 25, 1991. Even though not in custody, law enforcement did advise defendant Doody of his Miranda rights in language that could, and, in fact, was, clearly understood by defendant Doody. This Court further finds that defendant Doody did knowingly, voluntarily, and intelligently give up his right to remain silent and to have an attorney or a parent present while being questioned and did agree to talk.

(Pet. App. D at 4, emphasis added.)

On appeal, the State initially argued that Doody waived the trial court's finding that he was not "in custody," because he did not challenge the trial court's ruling to that effect. (See Pet. App. C at 17.) The State alternatively argued that Doody was adequately advised of and waived his *Miranda* rights. (See *id.*) The Arizona Court of Appeals gave Doody the benefit of the doubt in finding that *Miranda* applied:

> The state's waiver argument relies on an overbroad reading of the trial court's findings.

> The trial court's factual findings resolved only the limited issue that Doody "was not under arrest or in custody *when he was transported to the task force offices for questioning* on October 25, 1991." Contrary to the state's assertion, the trial court did not address whether Doody was in custody during the interrogation. Doody's failure to challenge the trial court's narrow finding that he was not in custody prior to the interview does not constitute a waiver of his argument that the officers failed to advise him sufficiently of his rights before obtaining his inculpatory statements. For purposes of review, we accept Doody's characterization of the questioning as a custodial interrogation requiring *Miranda* warnings.

(*Id.*, emphasis in original.) The court of appeals then went on to find that Doody was adequately advised of and waived his *Miranda* rights. (*Id.* at 17–18.)

Thus, while the State asserted, both in the trial court and on appeal, that *Miranda* was inapplicable, it has *always* maintained that Doody was adequately advised of and waived his rights.

Furthermore, in briefing in federal court, and at oral argument before the *en banc* panel, Petitioner has steadfastly maintained that Doody was clearly advised of and waived his *Miranda* rights. Detective Riley read Doody his right to counsel verbatim off a printed Juvenile *Miranda* Warnings Form (Pet. App. E). (Pet. App. F at 10.) It was only in explaining a parenthetical on the form that Detective Riley varied, attempting to convey to Doody that he had the right to

the presence of counsel even though the officers did not necessarily believe that he was involved in the crimes. (*Id.*) Viewed in isolation, Detective Riley's expounding upon the parenthetical explanation, if taken literally, could have been confusing. However, as this Court has recently reiterated, a reviewing court must not myopically focus upon a word or two to the exclusion of the entire colloquy (as well as the written waiver form signed by Doody). *Florida v. Powell*, 130 S. Ct. 1195, 1204 (2010) ("The inquiry is simply whether the warnings reasonably conve[y] to [a person] his rights as required by *Miranda*.") (quoting *Duckworth v. Eagan*, 492 U.S. 195, 203 (1989)). Viewed in context, it is clear that Doody was adequately advised of and waived his *Miranda* rights, and that the Arizona Court of Appeals' determination to that effect is not "unreasonable."

Doody also claims that statements by detectives "made hours into the interrogation" regarding not telling others what Doody told the detectives and imploring Doody to cooperate "conveyed a message at odds with *Miranda* and the Constitutional rights it safeguards." (Opposition at 10–11.) First, statements "made hours into the interrogation" are simply irrelevant to whether Doody was advised of and waived his *Miranda* rights hours earlier. Doody does *not* assert that he, at any point, invoked his *Miranda* rights, and the record refutes any such assertion. Moreover, as this Court recently made clear, "an accused who wants to invoke his or her right to remain silent [must] do so unambiguously." *Berghuis v. Thompkins*, 130 S. Ct. 2250, 2260 (2010).

Second, the statements quoted by Doody were made in the context of attempting to assuage Doody's feigned fear that fabricated individuals responsible for the murders would kill Doody, his family, and Doody's girlfriend, if Doody informed on them. Thus, the statements were made in an attempt by the detectives to assure Doody that he and his loved ones could be protected if Doody cooperated.

II. *The Arizona Court of Appeals' Determination that Doody's Statements were Voluntary was not Objectively Unreasonable.*

Doody attempts to support the *en banc* majority's conclusion that the Arizona Court of Appeals made an "unreasonable determination" of fact in noting that "Each of the officers involved...testified at the suppression hearing that Doody remained alert and responsive throughout the interrogation and did not appear overtired or distraught. Our review of the audio tapes confirms the officers' testimony." (Opposition at 13) (quoting Pet. App. C at 10.) Doody writes that the *en banc* majority concluded that "*the State record shows that not a single one of Doody's interrogators testified that Doody remained alert throughout the interrogation.* The State has never pointed to a shred of testimony that shows otherwise." (*Id.*, emphasis in original). To the contrary, Petitioner pointed out in its brief in the Ninth Circuit that Detective Riley testified that Doody was "very attentive" and never "display[ed] any real overt sign of being fatigued or tired," and never asked to sleep. (Ans. Br. at 16–17.) Petitioner also pointed out that Detective Sinsabaugh testified that, when he entered

the room at about 2:45 a.m. and became the primary questioner, Doody was "very erect, had a military bearing, and he appeared alert." (*Id.* at 17–18.) Thus, Petitioner has identified testimony supporting the court of appeals' finding.

Moreover, as pointed out by the dissent, Doody's decision not to answer certain questions does not negate the court of appeals' finding that he was "alert and responsive." (Pet. App. A at 125–26.) Rather, it is more reasonably interpreted as selective avoidance of questions for which he did not have a ready answer as he attempted to conjure up a story distancing himself as much as possible from the murders.

Doody stresses the *en banc* majority's conclusion that the Arizona Court of Appeals' erred in finding that Doody admitted borrowing the rifle "at the time of the temple murders." (Opposition at 14.) However, Doody fails to acknowledge the majority's blatant mischaracterization of that statement as an admission "to involvement in the temple murders after two and one-half hours of questioning." (Pet. App. A at 56.) Rather, as pointed out by Petitioner, the Arizona Court of Appeals drew a distinction between Doody's admission to merely borrowing the rifle and subsequently admitting participation in the crimes:

> Although the entire interrogation lasted approximately thirteen hours, Doody admitted he had borrowed Caratachea's rifle at the time of the temple murders after approximately two and one-half hours of questioning. *Doody admitted he had participated in the temple robbery after approximately six and one-half*

> *hours of questioning*, and his description of the events at the temple spanned nearly two hours.

(Pet. App. C at 9–10, emphasis added.)

Furthermore, as pointed out by the dissent, although Doody told the detectives that he borrowed the rifle "close to the end of June" and the murders were committed "in [early] August," the court of appeals', writing its decision five years later, "reasonably describes the time frame." (Pet. App. A. at 129.) The fact that the *en banc* majority seized upon this relatively insignificant statement evidences the lengths to which it went to find fault with the Arizona Court of Appeals' factual and legal findings. As aptly stated by the dissent:

> Under the Antiterrorism and Effective Death Penalty Act ("AEDPA"), the question before us is simply whether the Arizona state courts reasonably applied federal law and determined the facts in concluding that Doody's confession to participating in the murders was voluntary. Arizona conducted a ten-day evidentiary hearing and a thirty-four day trial. Five judges and twelve jurors have thoroughly reviewed all of the circumstances surrounding the interrogation. All concluded Doody voluntarily confessed. My colleagues nonetheless parse the record, re-weigh the evidence, and reach a *de novo* determination that the written and oral *Miranda* warnings were inadequate and the confession was coerced. In doing so, the majority discards as objectively unreasonable the factual findings made by the trial court, the

jury's considered verdict, and the well-reasoned opinion of the Arizona Court of Appeals.

(Pet. App. A. at 91–92.)

CONCLUSION

Petitioner requests that this Court grant certiorari and reverse the decision of the Ninth Circuit Court of Appeals.

Respectfully submitted

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